

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 987 of 2007

SHIV SHANKER DADHICH
V/S
STATE & ORS.

Mr. PP CHAUDHARY, for the appellant / petitioner

Mrs. RR KANWAR, AGA, for the respondent

Date of Order : 10.4.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

The matter comes up for consideration of stay. However, with the consent of learned counsel for the parties, the matter is being finally disposed of.

By this petition, the petitioner seeks to challenge the notice Annex.4, and also seeks a direction that if during pendency of the writ petition, the meeting for consideration of a motion for no confidence is held, and any consequential decision is taken prejudicial to the petitioner, then that may also be quashed.

The factual allegations, devoid of unnecessary details, are that on 17.2.2007 a notice was issued by the Chief Executive Officer, Zila Parishad, Chittorgarh fixing the meeting for consideration of No Confidence Motion against the petitioner to be held on 24.2.2007.

It is contended that the notice was issued on 17.2.2007, but was received by the petitioner as well as by

Azad Kanwar on 19.2.2007, and no other members have received it till 19.2.2007. Then the contention is that according to Section 37(3)(3), for convening a meeting for consideration of No Confidence Motion, a notice for not less than 7 clear days is to be given for such meeting, and according to the petitioner, the notice issued on 17.2.2007 fixing the meeting on 24.2.2007 does not fulfill the requirement of not less than 7 days' clear notice, the notice is bad, and consequently, the meeting held is also void in the eye of law. It is contended that the writ petition was filed well in time on 21.2.2007, and did come to be listed in the Court also on 23.2.2007. However, due to paucity of time of the Court, the matter could not be taken up before 9.3.2007, but then on that count, the petitioner cannot be made to suffer.

On 9.3.2007 a show cause notice was issued returnable within ten days, in response thereto, a reply has been filed on behalf of the State-respondent, and this factual aspect about issuance of notice Annex.4 on 17.2.2007, and fixing the meeting on 24.2.2007 is not disputed.

In that view of the matter, the precise controversy is, as to whether the notice issued on 17.2.2007 fixing the meeting on 24.2.2007 could be said to be valid on the face of the language of Section 37(3)(iii).

Learned counsel for the petitioner in this regard also invited my attention to the provisions of Rule 2(iii)

of the Rajasthan Panchayati Raj Rules, which defines the expression "clear days" to mean, clear days includes Sundays and holidays but does not include the day of meeting and the days of receipt of notice. Thus, from the date of issuance of notice, till the date for meeting, the days of the receipt of notice, and the date of meeting are to be excluded. If that be done, even if it were to be assumed that notice issued on 17th was received by all the persons concerned on 17th itself, still the date of 17th is to be excluded, then the date of the meeting being 24th is also to be excluded, and if the two days are excluded, the intervening clear days remain only 6. In that view of the matter, to say the least, notice cannot be said to be a notice of not less than 7 clear days, and therefore, it cannot be sustained.

Consequently, the writ petition is allowed, notice Annex.4 is quashed, and resultantly the proceedings of the meeting held in pursuance thereof are also declared to be non-est.

(N P GUPTA), J.

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